

This order was confirmed on appeal by the Judge, A. St. John Richardson.

1869.

Pananchand
Surajmal
v.
Bhivraj Dashrat

The petition was heard before Newton and Tucker, J. J. Dhirajlal Mathuradas for the petitioner,
The opponent was not represented.

Per Curiam.—The Court finds that the decree is payable by instalments, and that the first of these instalments became payable on the 1st of February 1864. As no application for the execution of the decree could be made till the time fixed for the payment of the first instalment had elapsed, the above date must, for the purposes of sec. 20 of Act XIV. of 1859, be looked upon as the date of the decree; and the application for execution, presented on the 26th of January 1866, was consequently within the time prescribed by law. The Court directs the orders of the lower Courts to be reversed, and the application to be remitted to the Court of first instance, in order that the remaining objections, if any, may be disposed of. Costs in this Court to be borne by the defendant, the judgment debtor.

Civil Petition.

Manchbaram Kalliandas.... *Petitioner.*
Ratilal Lalshankar..... *Opponent.*
Limitation—Execution—Summary Decision—Civ. Proc. Code, sec. 246—Act XIV. of 1859, sec. 22

Jan. 21.

The words "unless some proceeding shall have been taken within one year, &c" in sec. 22 of Act XIV. of 1859, must be read as excluding the day on which application to enforce a summary decision is made.

The petitioner applied, under sec. 246 of the Civil Procedure Code to remove an attachment placed on his property. On the 8th July 1867, the Court passed an order releasing the property from the attachment with costs.

On the 8th July 1868, the petitioner applied to execute that order as to the costs.

Held, that he was in-time.

Semble. An order under sec. 246 of the Civ. Pro. Code is a summary decision within the meaning of sec. 22 of the Limitation Act.

This was an application to set aside an order made by C. G. Kemball, Judge of the District of Surat, on the 31st of July 1868.

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 Manohararam
 Kaliandas
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The facts of the case appear sufficiently from the following order of the Judge :—

“It appears that the appellant in this case applied, under sec. 246 of the Civil Procedure Code, to the Court to remove an attachment placed on certain property of his at the instance of the judgment-creditors of some other person. The Court allowed the objection with costs on the 8th July 1867. On the 8th July 1868, the appellant applied to the Court to execute the decree or order in respect of the costs, but the Court held that by sec. 22 of the Law of Limitation the application should have been made within one year, and, as the 8th July 1868 was not within the prescribed limitation it rejected the application. Against that decision the plaintiff, (applicant), now appeals, and asks this Court to call for the papers in the case but I have no doubt that the decision of the lower Court was perfectly correct. The order passed on his petition of objection to the attachment was clearly of the nature of a summary decision, and the order respecting costs was part and parcel of the order allowing the appellant's objection, so that the case comes within the provisions of sec. 22 of the Limitation Act and the application to enforce must, therefore, be made within one year. The day, 8th July 1868, on which the application was made, being without the limitation of one year, the decision was no longer capable of being enforced. I, therefore, refuse this application.”

The case was heard this day before NEWTON and TUCKER J. J.

Dhirajlal Mathuradas for the applicant. This is not a decree in a summary suit. The application was under sec. 246 of the Code of Civil Procedure, and therefore, sec. 20 and not 22 of the Limitation Act applies. *Puresh Narain Roy* (a) (NEWTON, J.—That cast relates to sec. 11 of Act XXIII, of 1861, which does not give you a suit, and, therefore, the inquiry may not be a summary one; but here your application was under 246 of the Code, and you have a regular

(a) 9 Cal. W. Rep. R. 453.

suit, so the inquiry is necessarily summary] The word 'order' in sec. 20 of the Limitation Act is general and is not limited to cases in matters of execution between the same parties. It has been ruled by the Calcutta High Court that the day on which an application is made should be excluded in counting the three years under sec. 20 of the Limitation Act : *Brojo Beharee Sahoy v. Kowal Ram* (b). The same rule should be applied to sec. 22.

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Per Curiam :—The Court considers that the word "proceeding," in sec. 22 of Act XIV. of 1859, must be read as excluding the day on which the application referred to is made. In the present case, therefore, the application, made on the 31st July 1868, is within the prescribed time.

The order of the Judge is reversed; and it is directed that the application be received and reheard. Costs of this application on the respondent.

(b) 10 Cal. W. Rep. Civ. R. 5.

Special Appeal No. 690 of 1867.

Jan. 22.

Lado Lakshuman. Appellant.
 Krishnaji Sadashiv et al. Respondents.

*Attachment by Government—Uninterrupted possession
 —Limitation.*

The plaintiff in 1861 sued to recover his share in a *watan*. The defendants had been in actual possession of it from 1811 to 1830 when the Government attached the *watan* and enjoyed its revenues till 1845. In 1846 it was restored to the defendants.

Held, that the defendants had uninterrupted possession for more than thirty years, under cl. I of Reg. V. of 1827.

This was a Special Appeal from the decision of J. R. Naylor, Acting Senior Assistant Judge at Ratnagiri in Appeal Suits Nos. 218 and 245 of 1867, amending the decree of Ragho Narayan, Munsif of Vengurla.

The plaintiff, in December 1861, sued to recover his twentieth share in the *garhi watan* of the village of Vengurla.